IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.129 of 1997

in

Writ Petition no.639 of 1996

A.P. Banaji .. Appellant

versus

Union of India & Ors. .. Respondent

...

Mr.Umesh Shetty i/b Umesh Shetty & co. for the appellant.

Mr.Y.R. Mishra for the respondent.

CORAM : R.M.S.KHANDEPARKAR

And D.G.KARNIK,JJ

Reserved on: 30th April 2007.

Delivered on: 16th June 2007.

JUDGEMENT (Per D.G.KARNIK, J)

1. This appeal is directed against the judgement

and order dated 18th July 1996 of a learned Single Judge of this Court dismissing Writ Petition no.639 of 1996. By the said Writ Petition, the appellant had prayed for issuance of a writ of certorari praying for quashing and/or setting aside the policy of de-hiring of the requisitioned flats. By the Writ Petition, the appellant had also prayed for issuance of a writ of mandamus directing the respondents, Union of India and Chief of Naval staff to immediately and forthwith de-hire a flat belonging to the appellant bearing flat no.3 at the building "Cliff" Pochkhanawala Road, Worli, Mumbai (for short "the flat").

2. Briefly stated the facts are that in or about the year 1930, the appellant's grandmother, Gulbai Banaji constructed a building by name "the Cliff" at Pochkhanawala Road, Worli, Mumbai. At the onset of world war in the year 1939, Government of India urgently required several premises in Mumbai for the officers of its Armed Forces. On 10th August 1942, the Government hired the entire building "the Cliff" from Gulbai under the Defence of India Rules,1939. Thereafter an agreement dated 15th February 1944 was entered into between the said Gulbai and the Governor General in Council, hiring the flat no.3 on a monthly

rent of Rs.775/-. Remaining flats in the said building except the flat no.3 which is the subject matter of this appeal were dehired and released by the Government. Before her death, Gulbai gifted the flat no.3 to her son Firoz Banaji, the father of the present appellant. It appears that the appellant's father sold the flat to one Mr.Mehrabai Anklesaria but some time in the year 1984 the appellant repurchased it from her. The appellant and his predecessors in title made several representations to the Ministry of Defence for de-hiring of the flat. However, the representations were turned down by the authorities on the ground that there was paucity of accommodation for the defence officers in Mumbai. The appellant was also informed that the Defence Ministry had formulated a de-hiring policy and since as per the policy, only the flats equivalent to 10% of the new accommodation acquired by the authorities in a year were to be de-hired during that year. That policy of de-hiring as well as the refusal of the respondents to de-hire the flat was challenged by the appellant by the writ petition. The decision of the learned single Judge dismissing the writ petition is impugned in this appeal.

3. Learned counsel for the appellant submitted that the learned Single Judge erred in dismissing the writ petition. The flat was hired by the Governor General in Council under the Defence of India Rules, 1939 which was a compulsory hiring. The compulsory hiring under the Defence of India Rules 1939 was similar to the requisitioning of premises and therefore the principles laid down by the Supreme Court in its decision in H.D. Vora Vs. State of Maharashtra, reported in AIR 1984 SC 886 and in Grahak Sanstha Manch Vs. State of Maharashtra, reported in JT 1994(3) SC 474 were squarely applicable to the facts of the case. He submitted that in the aforesaid cases the Supreme Court has clearly laid down that the premises cannot be requisitioned for a period of more than 30 years and the same principle must also apply to compulsory hiring of the premises made under the Defence of India Rules, 1939. He submitted that the premises have continued to be hired by the Government since the year 1942 for a period of more than 60 years. The Government has no right to continue to hire the said flat beyond 30 years and continued hiring of the flat by the Government amounts to an unreasonable restriction on the appellant’s right to own and enjoy the property. He submitted that the

policy of de-hiring limited to 10% of the new accommodation made available to the defence department was arbitrary and unreasonable. Till the date of the decision of the learned Single Judge only 66 flats were de-hired and the appellant's flat which was at Sr.no.183 in the list prepared by the Defence Ministry was not likely to be hired for several years taking into consideration that only about 10 flats were being de-hired every year as per the said policy. Counsel for the appellant further submitted that respondents were also not strictly adhering the flats according to the seniority according to the date of initial hiring and they had de-hired some flats out of turn. He submitted that respondents had released some flats in Marlow building out of turn in violation of their own policy of dehiring according to the seniority and the appellant's flat was not being de-hired because of an unreasonable policy of de-hiring, which needs to be quashed.

4. In order to consider whether the principles regarding de-requisitioning of the premises requisitioned under the Bombay Land Requisition Act or any Act authorising requisition of the premises apply with equal force for de-hiring of the premises hired

under the Defence of India Rules it would be useful to refer to some of the provision of the rules.

5. Rules 75-A of the Defence of India Rules read as under:-

> Rule 75-A. (1) If in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, that Government may by order in writing requisition any property, movable or immovable, and may make such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning.
>
> (2) Where the Central Government or the Provincial Government has requisitioned any property under

> sub-rule (1) that Government may use or deal with the property in such manner as may appear to it to be expedient, and may acquire it by serving on the owner thereof, or where the owner is not readily traceable or the ownership is in dispute, by publishing in the official Gazette, a notice stating that the Central or Provincial Government, as the case may be, has decided to acquire it in pursuance of this rule.

6. Rule 81 of the Defence of India Rules conferred power on the government for regulating general control of letting and relevant provision relating to the control of rents was contained in clause no.(bb) of Rule 81 which read thus:

> "(bb) for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in

particular-

(i) for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances,

(ii) for preventing the eviction of Defendants and sub-tenants from such accommodation in specified circumstances, and

(iii) for requiring such accommodation to be let for either generally or to specified persons or classes of persons or in specified circumstances."

7. There is thus a clear distinction between the power of requisition which was conferred under Rule 75-A and the power of control of letting conferred under Rule 81 of the Defence of India Rules. Rule 75-A of the Defence of India Rules enabled the provincial government to requisition any property

when it was necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public order or efficient prosecution of the war or for maintaining supplies and services essential to the life of the community. Clause (bb) of Rule 81 on the other hand provided for regulating the letting and sub-letting any accommodation and controlling of the rents of such accommodation. In the circumstances mentioned in the Rule, the government could compel a person to let any premises either generally or to any specified persons and also control the rent at which the premises were let either generally or when let to specified persons or in specified circumstances. Object and purposes of Rule 75-A and Rule 81 were different. While Rule 75-A authorised the government to requisition any premises for securing the defence of British India, public safety or other purpose mentioned in the rule, Rule 81 permitted the government to control letting or sub-letting of the premises and the rents either generally or for specified persons or in specified circumstances. Power under Rule 81 was similar to the power of control of housing accommodation and prevention of any unreasonable increase in the rent as also accommodation being required to be made

available instead of being kept unused. It may be noted that under Rule 81, government could require the accommodation to be let either generally or to specified person or persons or classes of persons and not only to the government while Rule 75-A only permitted the accommodation to be requisitioned for government purposes. The requisitioning of the premises may come to an end when the purpose for which the premises which are requisitioned ceases to exist, while the letting made to any person in persuance of RUle 81 may continue till the contract continued or the Rule existed or any other protection granted to a tenant under any other Act (such as any Rent Control Act) continued. In H.D. Vora Vs. State of Maharashtra (supra) the Supreme Court drew a distinction between requisitioning of the premises which is for a temporary period and acquisition of the premises which is for permanent purpose. In Grahak Sanstha Manch Vs. State of Maharashtra (supra), the Constitution Bench of the Supreme Court while approving the decision in H.D. Vora’s case held that H.D. Vora’s case did not lay down that period of 30 years as an outer limit for which a requisition order may continue and held that requisition can continue for a reasonable period of

time. In that case, it also held that continuance of an order of requisition which was for a period of 30 years was unreasonable.

8. Constitutional validity of the several Rent Control Acts passed by legislatures or different states has been upheld. It therefore cannot be contended that the legislature has no power to regulate or control the letting of the accommodation or the rent to be charged on letting. Power to regulate letting is different than the power to requisitioning any premises. Rule 81 of the Defence of India Rules relates to the power of controlling letting of premises; such power of regulation includes the power directing letting of any premises to specified person or persons or classes of persons or in specified circumstances. The flat had first been let out to the government in pursuance of a direction issued under Rule 81 of the Defence of India Rules but later, on 15th February 1944 a fresh contract of letting took place and the flat continues in occupation of the government as a tenant. The legislature of Maharashtra had previously passed the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 which has been replaced by The Maharashtra

Rent Control Act, 1999. The flat which was first let in accordance with the direction for compulsory letting issued under the Defence of India Rules was governed by the Defence of India Rules so long as the rules existed and would continue to be governed by the Bombay Rent Act, 1947 or the Maharashtra Rent Control Act, 1999 as the case may be, thereafter. Though initially, the flat was let under a compulsory letting on 10th August 1942 thereafter there was a voluntary agreement of letting between the then owner and the Government of General in Council on 15th February 1944. In any event, the parties thereafter accepted that it was a contractual letting. In the year 1966, the father of the appellant had filed an application in the Small Causes Court Mumbai for fixing the standard rent in respect of the flat. The father of the appellant thus accepted that the Government of India was a contractual tenant and claimed the rent equivalent to the standard rent from the respondents. Thus the facts in the present case disclose that the present letting of the flat is contractual and atleast was accepted to be a contractual by the parties.

9. Learned counsel for the appellant relied upon

the decision of the Supreme Court in Union of India Vs. Ram Kanwar reported in AIR 1962 SC 247. In that case, the premises in question belonging to one Babu Ram was requisitioned by the Government of India under Rule 75-A of the Defence of India Rules for a period of one year from April 15, 1943 to April 14, 1944. The requisition was continued by an order dated April 2, 1946 until further orders. Request by Babu Ram for de-requisitioning of the premises was turned down. On the other hand, government requested the heirs of Babu Ram who had since died to let out the premises to it. The heirs of Babu Ram then filed a petition in the High Court of Punjab claiming possession of the flat. The Writ Petition was allowed. In appeal the Supreme Court confirmed that decision. In our view, the case is distinguishable on facts. In that case, the premises were requisitioned and rule no.75-A of the Defence of India Rules; the requisition could not continue after the purpose of requisition was over. The government then requested the heirs of Babu Ram to let out the flat which request was turned down by the heirs who filed the Writ Petition for possession. It was in these circumstances that the writ of mandamus was issued as the purpose of requisition had come to

an end. In the present case, the flat was never requisitioned but was let out. Though initially the letting appears to be compulsory under Rule no.81, we have already held that there is a distinction between requisitioning and compulsory letting. Furthermore, compulsory letting was turned into a contractual letting by a written contract of letting voluntarily executed by the then owner. Thereafter, the appellant's father even filed petition for fixation of the standard rent accepting that the government was a contractual tenant. In the circumstances, the decisions cited does not help the appellant at all.

10. It was lastly submitted that the appellant was suffering from an "HIV" and therefore required the premises reasonably for spending last few years of his life in his own premises. There is no material on record to support the contention of the appellant that he is suffering from "HIV" and in any event he was not so suffering when the Writ Petition was heard by the learned Single Judge; in any event such contention was not raised before the learned Single Judge. Assuming however that the petitioner is suffering from "HIV" disease and therefore requires the suit premises reasonably and bonafide

for spending last years of his life in his own premises, it is open to him to file a suit for possession under the relevant Rent Act. If such a suit is filed by the petitioner within 12 weeks, the trial court shall hear the said suit expeditiously. Beyond this direction, petitioner is not entitled to any relief as the premises are held by the government as a contractual tenant.

11. As regards the policy of de-hiring, nothing was brought to out notice to show that the policy of de-hiring is in any way discrimintaory, irrational or unreasonable. As per the policy of de-hiring, the government releases old rented premises equivalent to 10% of the new accommodation which becomes available for the defence in that area. The accommodation is released according to the seniority of initial hiring. We see no unreasonableness in the said policy and the policy does not make any hostile discrimination in the matter of release; the basis of release is the seniority of initial hiring.

12. In the circumstances, there is no merit in the appeal which is hereby dismissed with no order as to costs.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)